IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

M/s. Mittal Seeds & Chemical Pvt. Ltd.
vs.
Krishi Upaj Mandi Samiti, Hanumangarh Jn.

S.B.CIVIL SECOND APPEAL NO.97/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 13.12.2002 PASSED BY SHRI M.L. SHARMA, DISTRICT JUDGE, HANUMANGARH IN CIVIL APPEAL NO.19/1999.

DATE OF JUDGMENT ::: 6.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Goyal, for the appellant.

- - - - -

BY THE COURT:

Heard learned counsel for the appellant.

The appellant's case is that the appellant is engaged in the business of selling of certified cotton seeds for which no mandi fees can be levied. The appellant received a notice from the defendant that it is liable to pay the mandi fees over the sale of commodity which it is selling.

The appellant/plaintiff challenged the action of the defendant/respondent by filing a suit for permanent injunction which was dismissed by the trial court vide impugned judgment and decree dated 26.4.1999 and the appellate court also dismissed the appeal of the appellant by the impugned judgment and decree dated 13.12.2002. Hence, this second appeal.

Learned counsel for the appellant submits that though the plaintiff filed the suit in its individual capacity to protect its own right but the association of the certified seed producers preferred writ petitions before this Court being SB Civil Writ Petition No.1685/1992 which was decided by the learned Single Judge of this Court vide order dated 13.3.2000. This Court in the said order dated 13.3.2000 noticed that the controversy stood already resolved by the judgment of Hon'ble Supreme Court delivered in the case of State of Rajasthan and others vs. Rajasthan Agriculture Input Dealers' Association and others reported in (1996) 5 SCC 479 wherein it has been categorically held that no such fee can be imposed on the certified cotton seeds.

In view of the above, according to learned counsel for the appellant, the respondent cannot levy mandi fee on the commodity which the plaintiff is selling, therefore, two courts below committed serious illegality in dismissing the suit of the plaintiff.

It appears from the facts of the case that the respondent gave notice to the plaintiff asking him to pay

the mandi fees on the commodity which according to the defendant was subject to mandi fee which was disputed by the plaintiff by filing the suit on the ground that he is dealing with the certified cotton seed and mandi fees is not leviable. Mandi fees is not leviable on certified cotton seed has been decided by the Hon'ble Apex Court in the case of Rajasthan Agriculture Input Dealers' Association (supra).

The plaintiff only challenged the notice issued by the defendant. Whether the plaintiff is selling and dealing in the sale of certified cotton seeds only is a question of fact which depends upon each sale and it is not possible for the civil court to declare that the plaintiff will always sell certified cotton seeds only, therefore, the authorities of the defendant can assess the market fees leviable on the sale effected by the plaintiff on the basis of each sale and not on the basis of taking example of one and two sales.

In view of the above, if the appellant's sale is of certified cotton seed and it is exempted from levy of mandi fees, then in view of the aforesaid judgment of the Hon'ble Apex Court, the respondent cannot levy the mandi fees on the sale effected by the plaintiff and for that purpose, the plaintiff can take help of the aforesaid judgment of the Hon'ble Apex Court.

So far as the sales which are not of exempted items, then the authorities are entitled to demand the mandi fees

in accordance with law.

Since the matter has been settled by the Hon'ble Apex Court so far as levy of mandi fees on certified cotton seeds, nothing survives in this appeal.

In view of the above, I do not find any substantial question of law involved in this appeal.

Accordingly, this appeal is dismissed. However, the appellant is free to satisfy the authorities that the commodity sold by it is certified cotton seed and in that case, obviously in the light of the aforesaid judgment of the Hon'ble Supreme Court, the authorities will not demand mandi fees from the appellant. However, if the respondent is entitled to demand mandi fees in accordance with law, then they are free to demand and recover the mandi fees for commodity which is not covered in the exemption list.

(PRAKASH TATIA), J.

S.Phophaliya